IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6718 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAGNESH PRAVINCHANDRA VAIDYA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 6718 of 2002

MR NM KAPADIA for Petitioner No. 1

Mr.V.M.Pancholi,AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 20/02/2003

ORAL JUDGEMENT

1. By filing this petition, the petitioner has challenged the order of detention dated 8-7-2002 passed

against him by the Police Commissioner, Surat City, whereby the petitioner has been detained under subsection 2 of Section 3 of the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA" for short).

2. The grounds of detention served upon the petitioner alongwith the grounds of detention indicate that one Prohibition case bearing no.113/02 was registered against the petitioner on 8-3-2002 for offences punishable under Sections 65(1)(b) and 65-E,A of the Prohibition Act at Athwa Police Station wherein it has been alleged that 2110 bottles of foreign liquor has been seized from the possession of the petitioner. The said case is pending investigation, however, the petitioner was released on bail. The grounds of detention further indicate that the authority has also recorded statement of certain witnesses with regard to the bootlegging activities of the petitioner.

3. That in consideration of the aforesaid material, the detaining authority has come to the conclusion that the petitioner is a bootlegger within the meaning of Section 2(b) of "PASA". That the petitioner is released on bail and despite filing the Prohibition case, the bootlegging activities of the petitioner could not be prevented. That resort to general provisions of law being insufficient to prevent the petitioner from continuing his bootlegging activity, and as such, the impugned order is passed.

4. Mr. Kapadia, learned Advocate for the petitioner has restricted his arguments challenging the impugned order only on the point of delay in passing the detention order. It has been contended by him that the detention order dated 8-7-2002 is passed against the petitioner after about four months from the date of registered offence. Thus, there being such a long delay between the passing of the order of detention and the date of registered offence, the object of detaining the present petitioner under preventive detention is lost, and therefore, the order of detention is required to be set aside. Mr.Pancholi has further submitted that it is no doubt true that the incident in question is dated 8-3-2002, but the role of the petitioner came to be noticed later on, as initially he was not named in the FIR and ultimately he was arrested on 20-8-2002. He has tried to explain the delay by stating so. However, even considering this aspect also, there is delay of 1 1/2 months in passing the detention order.

4. Mr. Kapadia, learned Advocate for the petitioner

has placed reliance on the decision of this Court in Spl.C.A. no.5765/2002 wherein a co-accused who was also detained by the authority on the basis of the said criminal case has been released by this Court. In paragraph 4 thereof, this Court has observed as under:

" It appears that the last offence is registered against the detenu on 8/3/2002 and the order of detention has been passed on 24/5/2002 and hence, there is a delay of more than two months in passing the order of detention. No affidavit has been filed either by the detaining authority or by the State explaining satisfactorily the delay caused in passing the order of detention. Therefore, in view of the above judgment, the order of detention is illegal and the same cannot be sustained. Learned Advocate for the petitioner does not press any other points."

5. Now, in the instant case also, as stated earlier, even considering the fact that the petitioner was arrested at a later point of time, still there is inordinate unexplained delay of 1 1/2 months in passing the detention order by the detaining authority and therefore the order of detention is required to be quashed and set aside on this ground alone.

6. On the basis of the aforesaid decision, the petition is allowed. The impugned order of detention dated 8-7-2002 passed by the Police Commissioner, Surat City, against the petitioner is hereby quashed and set aside. The petitioner-detenu-Pragnesh Pravinchandra Vaidya is ordered to be released forthwith, if not required in any other case. Rule is made absolute accordingly.

(P.B.Majmudar,J.)

stanley-pbm.